

SERVICE DATE - LATE RELEASE AUGUST 11, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-501 (Sub-No. 3X)

CENTRAL OF TENNESSEE RAILWAY AND NAVIGATION COMPANY,
INCORPORATED--DISCONTINUANCE OF SERVICE EXEMPTION--IN BASTROP,
BURNET, LEE, LLANO, TRAVIS AND WILLIAMSON COUNTIES, TX

Decided: August 10, 2000

By petition filed April 24, 2000, Central of Tennessee Railway and Navigation Company, Incorporated, d.b.a. The Longhorn Railway Company (petitioner or Longhorn), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a rail line owned by Capital Metropolitan Transportation Authority (CMTA) extending between milepost 0.0 west of Giddings, TX, and milepost 154.07 at Llano, TX, including the Marble Falls Branch (6.43 miles), the Scobee Spur (3.3 miles), and the Burnett Spur (.93 miles), a distance of approximately 162 miles in Bastrop, Burnet, Lee, Llano, Travis and Williamson Counties, TX. Notice of the institution of an exemption proceeding was served and published in the Federal Register at 65 FR 25038 on April 28, 2000. We will grant the discontinuance exemption. No labor protective conditions will be imposed.

BACKGROUND

The subject line was owned for many years by Southern Pacific Transportation Company and then was acquired by the City of Austin in 1986. The City transferred ownership of the line to CMTA on May 20, 1998. The line was operated from 1986 to 1996 by Austin Railroad Company, d.b.a. Austin & Northwestern Railroad (AUNW). Longhorn succeeded AUNW as operator of the rail line in 1996.

According to petitioner, disputes between CMTA and it resulted in: (1) the filing by Longhorn of a petition for declaratory order alleging and requesting a finding that CMTA is violating its common carrier obligation; (2) termination by CMTA of its operating contract with Longhorn; and (3) the filing by CMTA on March 13, 2000 of a notice of intent to seek an adverse discontinuance of Longhorn's service. Longhorn adds, however, that the parties have recently settled their differences in regard to matters within the jurisdiction of the Board.¹

¹ In fact, we note that, in a decision served April 3, 2000, in Central of Tennessee Railway & Navigation Company, Incorporated, dba The Longhorn Railway Company--Petition for Declaratory Order, STB Finance Docket No. 33820, the Board granted a Longhorn request to withdraw its declaratory order petition with prejudice. Also, Longhorn's filing of this petition

Longhorn asserts that there will be no interruption of rail service to shippers as a result of this discontinuance because petitioner has agreed to cooperate in an orderly transition of service with a replacement operator selected by CMTA, Trans-Global Solutions, Inc., d.b.a. Austin Area Terminal Railroad (AATR).²

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of this transaction under U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions, ensure coordination between rail carriers and other modes, and encourage efficient management by allowing Longhorn to discontinue operations on a line over which a replacement operator has agreed to continue service [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Because AATR will be conducting operations and, thus, no shipper will be without service, we find that regulation is not necessary to protect shippers from the abuse of market power. Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. However, we do not normally impose employee protective conditions when a carrier discontinues all of its regulated rail operations unless the evidence shows the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R. Corp.—Abandonment, 354 I.C.C. 744 (1978); and Northampton and Bath R. Co.—Abandonment, 354 I.C.C. 784 (1978) (Northampton). Longhorn proposed to discontinue service over its entire operation. It does not appear to have any corporate affiliate or parent that could benefit from the proposed discontinuance of

has apparently mooted CMTA's notice of intent to seek adverse discontinuance of petitioner's service.

² In April 2000, the Board granted AATR exemption authority to operate the line in lieu of Longhorn. See Trans-Global Solutions, Inc. d/b/a Austin Area Terminal Railroad—Operation Exemption—Capital Metropolitan Transportation Authority, STB Finance Docket No. 33860 (STB served Apr. 4, 2000).

operations. And no one has attempted to show that the situation under Northampton exists for imposing labor protection in entire operation discontinuances. Under the circumstances, we will not impose labor protective conditions in this case.

Because this is a discontinuance proceeding and not an abandonment, we need not consider OFAs to acquire the line for continued rail service,³ trail use requests, or requests to negotiate for public use of the line. This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). As such, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by Longhorn of its entire operations as described above.

2. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by August 21, 2000, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

4. Petitions to stay must be filed by August 21, 2000. Petitions to reopen must be filed by August 31, 2000.

5. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on September 10, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary

³ OFAs to subsidize continued rail service, however, do apply to discontinuances.